IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-07-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 718 of 2001

P.R.Duraisamy ..Appellant/ COMPLAINANT

-vs-

R.Padmanabhan .. Respondent/ Accused

This appeal is filed under Section 378 Cr.P.C.,against the Judgment passed in C.C.No.27/2000 dated 30.11.2000 on the file of Judicial Magistrate No.2, Udumalpet, Coimbatore.

For appellant : : Mr. N.Duraisamy
for Mr.C.Deivasigamani

For respondent: : No appearance

JUDGMENT

This appeal has been preferred against the Judgment in C.C.27 of 2000 on the file of Judicial Magistrate No.2, Udumalpet, Coimbatore.

2. The short facts of the case of the prosecution are that on 25.4.1999 at about 10.00a.m., due to previous enmity, the accused had obstructed the complainant from driving the tractor had bitten his left index finger and also kicked him thereby causing grievous injuries. Since the complaint preferred by the complainant was referred to by the police, the complainant had preferred a private complaint under Section 200 of Cr.P.C. against the accused.

3. After taking cognizance of the offence, the learned Judicial Magistrate No.2, Udumalpet had issued summons to the accused, after recording the sworn statement of the complainant, on the appearance of the accused copies under Section 207 of Cr.P.C. were furnished to the accused and when the charges levelled against him were explained to him and questioned, the accused pleaded not guilty.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. On the side of the complainant, P.Ws 1 to 5 were examined. Exs P1 to 6 were exhibited .

4a. P.W.1 is the complainant. According to him, he is cultivating the land bearing Survey No.69/2A, /2B, /2C,71/1C in Polapatti Village. On 25.4.1999 at about 10.00 a.m., while he was ploughing the said land with his tractor, due to previous enmity, the accused came to the place of occurrence and pushed him down on the ground and suddenly bitten his left index finger causing grievous injury and also assaulted him on his chest with his hands and also kicked on the chest and that he had preferred Ex P1 complaint.

4b. P.W.2 would also corroborate the evidence of P.W.1 to the effect that on the date of occurrence, due to previous enmity, the accused came to the place of occurrence and way laid P.W.1 from proceeding with his work in his tractor pushed him down on the ground and beaten his hands causing injuries and also kicked him on the back of P.W.1

4c.P.W.3 would also corroborate the evidence of P.W1 and P.W.2 to the effect that at the time of occurrence, due to previous enmity, the accused had bitten the finger of P.W.1 and also kicked on his chest. P.W.4 is the doctor, who had examined P.W.1 for the injuries, he had sustained . Ex P6 is the wound certificate issued by him. M.O.1 is the X-ray and the doctor had noted four injuries in Ex P6. First one being a bite mark on the index finger, contusion measuring 3 x 2 cm on the right chest, another contusion measuring 3 x 2 cm on the right upper arm and a fracture found on the right shoulder scapular bone.

4d. P.W.5 is the head constable of Maduthukulam Police Station. According to him, P.W.1 came to the police station at about 5.30p.m and preferred a complaint which was registered by him under Maduthukulam Police Station Crime No.67 of 1999 under Sections 341 and 323 IPC and after enquiry, the said complaint was closed as "mistake of fact".

5. When incriminating circumstances were put to the accused under Section 313 Cr.P.C., he has denied his complicity with the crime. After going through the evidence both oral and documentary let in before the learned trial Judge, the learned trial Judge has come to a conclusion that there is a discrepancy in the complaint and the evidence of P.Ws 1 and 2 and in the complaint, there is no averments that in the occurrence the scapular bone on the shoulder got fractured. Under such circumstances, giving benefit of doubt to the accused, the learned Judicial Magistrate No.2, /trial Judge has acquitted the accused. Aggrieved by the findings of the learned trial Judge, the complainant has preferred this appeal.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6. The point for determination in this appeal is whether the findings of the learned trial Judge is perverse in nature to warrant any interference from this Court?.

7. I heard Mr. N.Duraisamy, learned Counsel appearing for the appellant and carefully considered his submissions.

8. The Point:
According to P.W.1, the complainant , due to previous enmity, on the date of occurrence, the accused had bitten his left index finger and also kicked on the chest. In the complaint, the complainant has mentioned about three injuries due to the assault made by the accused on the date of occurrence. A contusion on the right side of the chest, a bite injury on the index finger.(It is not mentioned whether in the right index finger or left index finger) and a fracture on the right hand. But while deposing before the Court as P.W.1, the complainant has not stated that he had sustained a fracture on the right hand. But would depose that he had sustained injury due to bite of the accused on the left index finger. He would further depose that his complaint preferred before the police was referred to "as mistake of fact" and that he got himself admitted in a Government Hospital and took treatment as an in patient for ten days. His evidence was corroborated by P.W.2 and P.W.3. But both P.W.2 and P.W.3 have not deposed that in the occurrence P.W.1 had sustained a fracture on the right shoulder. Only P.W.4 the doctor, who had examined P.W.1 on 25.4.1999 at about 7.15p.m would depose that there was fracture found on the right shoulder of P.W.1. But in the cross examination, the doctor has admitted that injury Nos.2 and 3 would have been sustained due to a fall on the ground. According to P.W1, the occurrence had taken place at 10.00a.m. On 25.4.1999,but the complaint before the police was preferred , according to P.W.5, only at 5.30p.m., on 25.4.1999. Further it is seen from the evidence of P.W.5, that on the same day, a counter complaint was preferred by the accused herein/Padmanabhan and registered in Crime No.68 of 1999 and that the said complaint was also pending trial before the Court. It is seen from the evidence of P.W.5, head constable that since there were two complaints in respect of the same occurrence ie., Crime No.67 of 1999 preferred by the complainant and Crime No.68 of 1999 preferred by the accused, the police investigated and found that aggressor for the occurrence is the complainant, and filed the chargesheet in Crime NO.68 of 1999 preferred by the accused herein and closed the case in Crime No.67 of 1999 which is in conformity with the Rule 588 A of the Police Standing Order. Under such circumstances , I do not find any reason to interfere with the findings of the learned trial Judge, who has rightly dismissed the complaint preferred by

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the complainant on the ground that there is no material to warrant conviction against the accused. I do not find any perverseness in the findings of the learned trial Judge to warrant any interference from this Court. The point is answered accordingly.

9. In fine, the appeal is dismissed confirming the Judgment in C.C.No.27 of 2000 on the file of Judicial Magistrate No.2, Udumalpet, Coimbatore.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To

1. The Judicial Magistrate No.2,Udumalpet
2. -do- through the Chief Judicial Magistrate, Coimbatore

Crl.A.No. 718/2001

VRK (CO)
kk 23/7

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/